

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

www.montgomerycountymd.gov/content/council/boa/index.asp

(240) 777-6600

Case No. S-2821

PETITION OF WILLIAM A. MARTINEZ AND LUZ MARINA AVELLA

OPINION OF THE BOARD

(Opinion Adopted March 28, 2012)

(Effective Date of Opinion: April 20, 2012)

Case No. S-2821 is an application, under Section 59-G-2.00 of the Zoning Ordinance, for a special exception to allow an accessory apartment. The Hearing Examiner for Montgomery County held a hearing on the application on January 5, 2012, closed the record in the case on February 6, 2012, and on that date issued a Report and Recommendation for approval of the special exception.

Decision of the Board: Special Exception **Granted** Subject to
The Conditions Enumerated Below.

The subject property is Lot 1, Block 1, English Manor Subdivision, located at 4000 Heathfield Road, Rockville, Maryland 20853 in the R-90 Zone.

The Board of Appeals considered the Report and Recommendation at its Worksession on March 28, 2012. The Board also had before it a letter, dated March 27, 2012, from Mr. Martinez and Ms. Avella. They enclose revised Site and Landscape plans, as required by proposed Condition 5 of the Hearing Examiner's Report and Recommendation, together with photographs showing the fence and walkway on the property. After careful consideration and review of the record in the case, the Board adopts the Report and Recommendation and grants the special exception, subject to the following conditions:

1. The Petitioner is bound by his testimony, representations and exhibits of record, to the extent that such testimony and evidence are identified in the Hearing Examiner's Report and Recommendation and in this Opinion.

2. The Petitioner must make the repairs needed to comply with the conditions set forth in the Memorandum of Jason White, Housing Code Inspector, Division of Housing and Community Affairs (Exhibit 16(a)).
3. No more than one person, who must be Mr. Martinez' mother, may reside in the accessory apartment;
4. The main dwelling unit must not be occupied by a family of unrelated persons;
5. The room marked as "office" on the Floor Plan (Exhibit 5) is the only room that may be used for sleeping.
6. Petitioner must not receive compensation for the occupancy of more than one dwelling unit; and
7. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioners shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

On a motion by Carolyn J. Shawaker, seconded by Stanley B. Boyd, with Walter S. Booth, David K. Perdue, Vice-Chair, and Catherine G. Titus, Chair, in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No.S-2821 is re-opened to receive William Andres P. Martinez and Luz Marina Avella's letter, dated March 27, 2012, with attachments; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

Catherine G. Titus
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 20TH day of April, 2012.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.